

had ascertained nothing was due Mrs. Carter on account of the paternal succession, or no more was due from the deceased, Mr. Calvert, on that account than he had paid in money, would not such an award have been calculated to shake the title conveyed by the deed of November, 1836, or at all events, would it not so far as Mr. Carter is concerned, have thrown doubts upon his title as resulting from that deed? The reference of this question could not, to be sure, have impaired the rights of the children of Mr. Carter, who were minors and no parties to the submission, but it certainly seems to me by no means a clear proposition that if Mr. Carter had agreed to open the settlement, and that the arbitrators should re-examine the question, and they had come to the conclusion that no consideration was given for the deed, that his rights under it as derived from the will of his wife could not have been affected.

Certainly it is to be presumed Mr. Carter would have felt much reluctance to submit to the contingency of a new arbitration, a subject which had been thus solemnly settled in the lifetime of his wife, in the confidence of the final character of which she had made her will, and had gone to her grave.

There is moreover another reason entitled, in my judgment, to much consideration in determining the intention of the parties to this reference. Mr. Calvert the elder died early in the year of 1838, but on the 11th day of November, 1837, he executed to his sons, George H. and Charles B. Calvert, a deed of his real and personal estate in trust to secure to the grantees the sums due from him to them on account of their maternal grandfather, and also to secure his said sons and his daughters the sums which would be due them upon his death, and which he had received from their maternal grandmother. This deed was, of course, executed by the grantor, and received by the grantees, under the impression that the paternal succession of the daughters had already been accounted for and paid by Mr. Calvert, for it makes no provision for their payment in respect thereof, and it may perhaps well be doubted whether the trustees acting under that deed would have been perfectly justified in doing any act which would revive this claim or subject the